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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Dan L. Boger,

10 Plaintiff,

11 v.

12 General Automobile Insurance Services  
13 Incorporated, et al.,

14 Defendants.

No. CV-19-05094-PHX-GMS

**ORDER**

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16 Pending before the Court is Defendant The General Automobile Insurance Services  
17 Incorporated (“The General”)’s Motion to Dismiss The General Automobile Insurance  
18 Services, Inc. for Lack of Personal Jurisdiction (Doc. 18). The Motion is granted.<sup>1</sup>

19 **BACKGROUND**

20 The facts as alleged in the complaint are as follows. Plaintiff Dan Boger  
21 (“Plaintiff”), a resident of Maryland, alleges that on June 21, 2019, he received a  
22 telemarketing call on his cell phone from Defendant Spanish Quotes, Inc. (“Spanish  
23 Quotes”), an Arizona corporation with its principal place of business in Phoenix, AZ.  
24 Plaintiff alleges that the call was placed using an automatic telephone dialing system to  
25 Plaintiff’s cell phone number, which is registered on the National Do Not Call Registry,  
26 and that Plaintiff spoke with a “Shawn Jr.” from “US Auto Care,” who solicited insurance

27 <sup>1</sup> The General has requested oral argument. That request is denied because the parties have  
28 had an adequate opportunity to discuss the law and evidence and oral argument will not  
aid the Court’s decision. *See Lake at Las Vegas Investors Group, Inc. v. Pac. Malibu Dev.*,  
933 F.2d 724, 729 (9th Cir. 1991).

1 services. Plaintiff further alleges that the call was eventually transferred to “Elise” at The  
2 General, a California corporation with its principal place of business in Tennessee, who  
3 provided Plaintiff with a call back number matching The General’s corporate office. Based  
4 on this phone call, Plaintiff filed a class action complaint (Doc. 1) on September 5, 2019,  
5 alleging that The General and Spanish Quotes had entered into an agreement to direct  
6 automated telemarketing calls to him and other class members without their prior express  
7 written consent in violation of the Telephone Consumer Protection Act (“TCPA”), 47  
8 U.S.C. § 227. This motion followed.

## 9 DISCUSSION

### 10 I. Legal Standard

11 A federal court sitting in diversity “applies the personal jurisdiction rules of the  
12 forum state provided the exercise of jurisdiction comports with due process.” *Scott v.*  
13 *Breeland*, 792 F.2d 925, 927 (9th Cir. 1986). The Arizona long arm statute is co-extensive  
14 with the limits of federal due process. *See Doe v. Am. Nat’l Red Cross*, 112 F.3d 1048,  
15 1050 (9th Cir. 1997) (citing *Batton v. Tenn. Farmers Mut. Ins. Co.*, 153 Ariz. 268, 270,  
16 736 P.2d 2, 4 (1987)); *see also* Ariz. R. Civ. P. 4.2(a). “Due process requires that  
17 nonresident defendants have certain minimum contacts with the forum state, so that the  
18 exercise of personal jurisdiction does not offend traditional notions of fair play and  
19 substantial justice.” *Doe*, 112 F.3d at 1050 (citing *Int’l Shoe Co. v. Wash.*, 326 U.S. 310,  
20 316 (1945)).

21 There are two types of personal jurisdiction—general and specific. *See Daimler AG*  
22 *v. Bauman*, 571 U.S. 117, 126–27 (2014). Plaintiff does not argue that The General is  
23 subject to general personal jurisdiction in Arizona; thus, only specific personal jurisdiction  
24 need be considered. Courts can exercise specific personal jurisdiction when: (1) the  
25 defendant purposefully directed its activities or consummated some transaction with the  
26 forum or a resident of the forum, or performed some act by which it purposefully availed  
27 itself of the privileges of conducting activities in the forum; (2) the claim arises out of or  
28 relates to the defendant’s forum-related activities; and (3) the exercise of jurisdiction is

1 reasonable. *Harris Rutsky & Co. v. Bell & Clements Ltd.*, 328 F.3d 1122, 1129 (9th Cir.  
2 2003). On a motion to dismiss for lack of personal jurisdiction brought pursuant to Fed. R.  
3 Civ. P. 12(b)(2), the plaintiff bears the burden of demonstrating that the court's exercise of  
4 jurisdiction is proper. *CollegeSource, Inc. v. AcademyOne, Inc.*, 653 F.3d 1066, 1073 (9th  
5 Cir. 2011). However, where, as here, the district court decides a motion to dismiss for lack  
6 of personal jurisdiction without an evidentiary hearing, the plaintiff need only make a  
7 prima facie showing of the jurisdictional facts. Uncontroverted allegations in the plaintiff's  
8 complaint must be taken as true, and conflicts between the parties over statements  
9 contained in affidavits must be resolved in the plaintiff's favor. *Boschetto v. Hansing*, 539  
10 F.3d 1011, 1015 (9th Cir. 2008).

## 11 **II. Analysis**

12 In determining whether a defendant purposefully established minimum contacts  
13 within a forum in the context of a contractual relationship, courts consider "prior  
14 negotiations and contemplated future consequences, along with the terms of the contract  
15 and the parties' actual course of dealing." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462,  
16 482 (1985). A "contract with an out-of-state party alone can[not] . . . establish sufficient  
17 minimum contacts in the other party's home forum"; however, if the contract demonstrates  
18 that a defendant contemplated a long-term interdependent relationship in the forum state,  
19 the defendant cannot argue that its relationship to that state is "random," "fortuitous," or  
20 "attenuated." *Id.* at 479. For example, in *Burger King*, Burger King, a Florida corporation,  
21 brought an action in Florida federal district court when Rudzewicz, a Burger King franchise  
22 owner, refused a termination order and continued to operate a Burger King restaurant in  
23 Michigan. *Id.* at 482. The court found that although Rudzewicz did not maintain offices in  
24 or ever visit Florida, the franchise dispute grew directly out of "a contract which had a  
25 substantial connection with [Florida]" because Rudzewicz deliberately "reach[ed] out  
26 beyond" Michigan and "entered into a carefully structured 20-year relationship that  
27 envisioned continuing and wide-reaching contacts with Burger King in Florida."<sup>2</sup> *Id.* at

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28 <sup>2</sup> The 20-year contract required franchisees to pay monthly royalties, advertising and sales  
promotion fees, and rent. Franchisees also agreed to submit to Burger King's exacting

1 479–480. Consequently, the court held that the Florida district court’s exercise of  
2 jurisdiction did not offend due process.

3 Here, The General’s contract with Spanish Quotes “mandates the application of the  
4 law and courts of Tennessee, not Arizona,” (Doc. 25 at 5n2), and The General “did not  
5 enter into any agreements with [Spanish Quotes] in Arizona,” (Doc. 18-1 at 2). Plaintiff  
6 has not alleged any facts in his Complaint or in his Opposition to suggest that The General’s  
7 “prior negotiations,” “contemplated future consequences,” “terms of the contract,” or  
8 “actual course of dealing” with Spanish Quotes might establish minimum contacts with  
9 Arizona. *Burger King*, 471 U.S. at 479.

10 In *Calder v. Jones*, 465 U. S. 783 (1984), a California actress brought a libel suit in  
11 California state court against a reporter and an editor who worked for the National Enquirer  
12 at its headquarters in Florida. The plaintiff’s libel claims were “based on an article written  
13 and edited by the defendants in Florida for publication in the National Enquirer, a national  
14 weekly newspaper with a California circulation of roughly 600,000.” *Walden v. Fiore*, 571  
15 U.S. 277, 286 (2014). The Supreme Court found the forum contacts in that case to be  
16 “ample” because,

17 The defendants relied on phone calls to “California sources” for the  
18 information in their article; they wrote the story about the plaintiff’s activities  
19 in California; they caused reputational injury in California by writing an  
20 allegedly libelous article that was widely circulated in the State; and the  
21 “brunt” of that injury was suffered by the plaintiff in that State. . . . However  
22 scandalous a newspaper article might be, it can lead to a loss of reputation  
23 only if communicated to (and read and understood by) third persons. . . .  
24 Accordingly, the reputational injury caused by the defendants’ story would  
25 not have occurred but for the fact that the defendants wrote an article for  
26 publication in California that was read by a large number of California  
27 citizens. Indeed, because publication to third persons is a necessary element  
28 of libel . . . the defendants’ intentional tort actually occurred in California....  
In this way, the “effects” caused by the defendants’ article—i.e., the injury to  
the plaintiff’s reputation in the estimation of the California public—connected  
the defendants’ conduct to California, not just to a plaintiff who lived there.  
That connection, combined with the various facts that gave the article a  
California focus, sufficed to authorize the California court’s exercise of  
jurisdiction.

regulation of every conceivable aspect of their operations. The documents also emphasized  
that Burger King’s operations are conducted and supervised from the Miami headquarters,  
that all relevant notices and payments must be sent there, and that the agreements were  
made in and enforced from Miami.

1 *Id.* at 286-88. Unlike in *Calder*, the injury The General allegedly caused did not occur in  
2 Arizona; nor were events that occurred in Arizona a but-for cause of Plaintiff's injury. The  
3 effects of The General's actions as alleged in Plaintiff's complaint do not connect The  
4 General to Arizona beyond the fact of Spanish Quotes' presence in Arizona.<sup>3</sup>

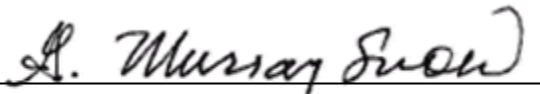
5 Plaintiff has not met his burden of demonstrating that this Court's exercise of  
6 jurisdiction is proper. The Court therefore grants The General's Motion to Dismiss.<sup>4</sup>

7 **CONCLUSION**

8 Defendant has not met his burden of demonstrating sufficient minimum contacts  
9 between Defendant The General and this forum.

10 **IT IS THEREFORE ORDERED** that The General's Motion to Dismiss The  
11 General Automobile Insurance Services, Inc. for Lack of Personal Jurisdiction (Doc. 18)  
12 is **GRANTED**. Plaintiff's claims as to The General Automobile Insurance Services, Inc.  
13 are dismissed without prejudice.

14 Dated this 3rd day of January, 2020.

15   
16 G. Murray Snow  
17 Chief United States District Judge

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24 <sup>3</sup> In his Response, Plaintiff asserts that he "bases specific personal jurisdiction on The  
25 General's purposeful acts in contracting with SQI, an Arizona corporation, to send illegal  
26 calls" and that his "claims arise directly from this relationship, nor [sic] from the purported  
locus of where the call was physically dialed." (Doc. 23 at 2.) Accordingly, the Court does  
not consider the location of the call in establishing personal jurisdiction.

27 <sup>4</sup> Plaintiff also requests jurisdictional discovery. That request is denied. *See Boschetto*, 539  
28 F.3d at 1020 (finding that because neither plaintiff's complaint nor his affidavit alleged  
jurisdictionally relevant actions by defendants, the district court's denial of plaintiff's  
request for discovery, "which was based on little more than a hunch that it might yield  
jurisdictionally relevant facts," was not an abuse of discretion).